

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRENTON D. TAYLOR

Claimant

VS.

ONEOK

Self-Insured Respondent

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Docket No. 1,059,764

ORDER

Respondent requests review of the August 9, 2012 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

APPEARANCES

Matthew L. Bretz, of Hutchinson, Kansas, appeared for the claimant. Larry G. Karns, of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board considered the same stipulations as the ALJ and the same record, consisting of the transcript of Preliminary Hearing held on June 26, 2012, with attached exhibits.

ISSUES

The Administrative Law Judge (ALJ), in his Order of August 9, 2012, ordered that Dr. Do perform an IME of claimant for the purpose of determining "treatment recommendations and a causation opinion on the claimant's need for treatment".

The respondent requests review of whether claimant met with accidental injury arising out of and in the course of his employment with respondent; whether claimant met his burden of proof that his alleged injury was the prevailing factor causing the injury, medical condition and resulting disability or impairment; and whether the ALJ exceeded his jurisdiction in ordering an IME on causation without a finding that claimant had sustained his burden of proof.

Claimant argues that the ALJ should be affirmed.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the appeal of respondent should be dismissed and the preliminary hearing Order of the ALJ remains in full force and effect.

The ALJ's Order of August 9, 2012, states in full: "The court requests an IME from Dr. Do for the purpose of determining treatment recommendations and a causation opinion on the claimant's need for treatment."

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.¹

Addressing respondent's objection to claimant being referred to Dr. Do for an IME, the Board finds that is not an issue over which the Board takes jurisdiction on an appeal from a preliminary hearing Order. A referral by an ALJ for an independent medical examination is not an issue over which the Board takes jurisdiction on appeal from a preliminary hearing order.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this

¹ See K.S.A. 44-551.

² K.S.A. 2011 Supp. 44-534a.

review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

This Board Member finds that respondent's appeal from the preliminary hearing Order of the ALJ raises an issue over which the Board does not take jurisdiction on an appeal from a preliminary hearing Order. Respondent's appeal is dismissed and the Order of the ALJ remains in full force and effect.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated August 9, 2012, remains in full force and effect and respondent's appeal from that Order is dismissed.

IT IS SO ORDERED.

Dated this _____ day of October, 2012.

HONORABLE GARY M. KORTE
BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant
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Larry G. Karns, Attorney for Respondent and its Insurance Carrier
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Thomas Klein, Administrative Law Judge